

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-091420

12/17/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

J & M CARPET & UPHOLSTERY

MELANIE E BEAUCHAMP

v.

TIM LAPSY

CURTIS D ENSIGN

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A). This matter has been under advisement since the receipt of the Appellants reply memorandum. This Court has considered and reviewed the Memoranda submitted by counsel.¹

1. Facts

This case was originally filed on or about June 8, 2000 by Appellee/Plaintiff as a small claims action in the Chandler Justice Court seeking to recover less than \$1650.00 in amounts the Appellee/Plaintiff claimed were owed to his company for the balance due for worked performed for Appellant, Tim Lapsy. On May 11, 2001, Appellant/Defendant filed a request and order to Transfer to Civil Division.² On May 14, 2001, the request was granted.³ On May 25, 2001, the Appellee's/Plaintiff counsel filed a Notice of Appearance.⁴ The case was transferred to the Civil Division of the Justice Court and counsel appeared on behalf of both parties. The trial occurred on February 21, 2002 and resulted in a judgment of \$1,650.00 in favor of Apellee/Plaintiff. The trial judge also granted Appellee/Plaintiff's request for attorney's fees in the amount of

¹ The record of proceedings from the Chandler Justice Court was not submitted.

² Appellant's Memorandum p. 2.

³ Appellant's Memorandum p. 2

⁴ Appellant's Memorandum p. 2

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\$2870.00.⁵ The Defendant/Appellant appeals. The Appellant raises two issues on appeal. First, the Appellant argues that trial court erred when it awarded attorney fees to plaintiff under 42 U.S.C. 1988. Second, that the trial court erred when it awarded attorney's fees to plaintiff when they were not requested in complaint.

2. Attorney's fees awarded under 42 U.S.C. 1988

Appellant argues that the trial court's award of attorney fees to Appellee/Plaintiff under 42 USC § 1988 was in error. Appellee concedes the error, but claims attorney fees pursuant to A.R.S. Section 12-344.

Clearly, it was error to award attorney fees under 42 USC § 1988 (b) which provides in pertinent part that:

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs....

In this case, no such conditions exist to enforce any of the provisions stated above. This case was the result of the Appellant/Defendant's failure to pay the balance due for services rendered. Therefore, we reverse the trial court's award of attorney's fees under 42 U.S.C. § 1988.

2. Attorney's fees awarded but not requested in complaint.

The Appellant/Defendant also claims that the trial court erred by awarding attorney's fees to Appellee/Plaintiff when the Appellee failed to request attorney's fees in its pleadings as required under Arizona Rules of Civil Procedure 54(g)(1). Appellee responds by stating that at its "...first available opportunity..." plaintiff counsel put defendant on notice to request attorney fees.⁶

Attorney's fees awarded pursuant to A.R.S. Section 12-341.01 is discretionary with the trial court. Certainly, due process requires that claims for attorney's fees be made prior to trial in

⁵ Appellant's Memorandum p. 3

⁶ Appellee Memorandum p.4

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such a manner as to put the other party on notice.⁷ Here, Appellee's Objection to Motion to Dismiss requested attorney fees for that issue (Motion to Dismiss), but not for the entire case. The trial court erred in awarding attorneys fees.

IT IS ORDERED reversing the trial court's award of attorney fees to Appellee, and affirming the judgment of \$1,650.00 to Appellee.

IT IS FURTHER ORDERED remanding this case back to the Chandler Justice Court for entry of a modified judgment, consistent with this opinion.

⁷ See Rule 54(g)(1), Arizona Rules of Civil Procedure.